

CIVIL SERVICE COMMISSION MINUTES
AUGUST 6, 2008

A regular meeting of the Civil Service Commission was held at 2:30 p.m., in Room 358 of the County Administration Center, 1600 Pacific Highway, San Diego, California.

Present were:

W. Dale Bailey
A.Y. Casillas
Barry I. Newman
Francesca Krauel

Absent was:

None

Comprising a quorum of the Commission

Support Staff Present:

Joy Kutzke, Analyst II, for Patt Zmary, Executive Officer
Karen F. Landers, Senior Deputy County Counsel

Selinda Hurtado-Miller, Reporting

Approved
Civil Service Commission
September 3, 2008

COUNTY OF SAN DIEGO
CIVIL SERVICE COMMISSION MINUTES
AUGUST 6, 2008

1:45 p.m. CLOSED SESSION: Discussion of Personnel Matters
 and Pending Litigation

2:30 p.m. OPEN SESSION: Room 358, 1600 Pacific Highway, San
 Diego, California

<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
5,6,7,12		8,9,	

COMMENTS: Motion by Newman to approve all items not held for
discussion; seconded by Casillas. Carried.

CLOSED SESSION AGENDA
County Administration Center, Room 400B
(Notice pursuant to Government Code Sec. 54954.2)
Members of the public may be present at this
location to hear the announcement of the
closed session agenda.

- A. Commissioner Bailey: CONSIDERATION OF PUBLIC
EMPLOYEE DISCIPLINE (GOV. CODE SEC. 54957(b)) Fern
Steiner, Esq., on behalf of **2008-05**, appealing an Order
of Suspension and Charges from the Probation
Department.
- B. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED
LITIGATION (54956.9(b)(3)(E)) One potential case.

OPEN SESSION AGENDA
County Administration Center, Room 358

MINUTES

1. Approval of the Minutes of the regular meeting of July 2,
2008.

Approved.

CONFIRMATION OF ASSIGNMENT

2. Commissioner Bailey: **2008-06**, appealing an Order of Termination and Charges from the Sheriff's Department.

Confirmed.

3. Commissioner Newman: Abdul Sayid, Worksite Organizer, SEIU Local 221, on behalf of **Alma Porley**, Mental Health Specialist, appealing a Notification of Incompatible Activity from the Health and Human Services Agency.

Confirmed.

4. Commissioner Casillas: Abdul Sayid, Worksite Organizer, SEIU Local 221, on behalf of **Deena Lark**, Social Worker II, appealing a Final Order of Demotion and Charges (from Protective Services Worker) from the Health and Human Services Agency.

Confirmed.

5. Commissioner Krauel: Sarah Smith-Withey, Worksite Organizer, SEIU Local 221, on behalf of **Kathy Wagner**, Criminalist III, Sheriff's Department, requesting a classification review under Civil Service Rule XII.

Dennis Floyd, Sr. Deputy County Counsel requested that a hearing be denied due to untimeliness of the appeal. Mr. Floyd explained that both a certified notice (sent July 19th), as well as a regularly mailed notice (sent July 2nd) were sent to Ms. Wagner. Approximately three weeks later, Ms. Wagner approached DHR stating that she had not received notice regarding her request for a classification review. DHR again provided Ms. Wagner with notice, which she received on July 23rd. Ms. Wagner, together with Local 221 Worksite Organizer, Sarah Smith-Withey, filed an appeal with the Civil Service Commission on July 28th.

It is noted that neither the first two notices were returned to DHR, and in fact the July 19th certified letter was signed for. Commissioner Newman asked whether Ms. Wagner's address had been verified as correct by DHR, to which DHR responded in the affirmative.

**Motion by Krauel to deny hearing; seconded by Newman.
Carried.**

CLASSIFICATION REVIEW

Decision

6. Modification of May 7, 2008 Decision in the Matter of the Appeals of **Mary Ann Knockeart, Jeffrey Martin, George Osper, Jeffery Reichert, Dale Santee, Barton Sheela III, Liesbeth van den Bosch, and Steven Wadler**, Deputy Alternate Public Defenders IV, Office of the Alternate Public Defender, Rule XII classification review pertaining to **George Osper**.

RECOMMENDATION: Modify the May 7, 2008 Decision as follows:

Delete Paragraph 3(b) (page 2, lines 15-20) in its entirety and replace it with the following language:

"b. That he be awarded back pay and benefits as a DAPD V from and including June 30, 2007 to the date of this decision, minus any pay and benefits received as a Deputy Alternate Public Defender IV during that time period; and"

Motion by Newman to approve modification; seconded by Casillas. Carried.

AYES:	BAILEY, CASILLAS, NEWMAN
NOES:	NONE
ABSENT:	NONE
ABSTENTIONS:	NONE
NOT PARTICIPATING:	KRAUEL

DISCIPLINE

Findings

7. Commissioner Bailey: Fern Steiner, Esq., on behalf of **2008-05**, appealing an Order of Suspension and Charges from the Probation Department.

FINDINGS AND RECOMMENDATIONS:

Employee is a Correctional Deputy Probation Officer I (CDPO I). Employee had no prior discipline, an overall above standard performance record, and was promoted to CDPO II shortly before the incident at issue. Employee was suspended for three days for allegedly inappropriately using force on a juvenile detainee and for falsely reporting the incident. Employee also failed the probation for the promotion as a result of the incident. Only the Suspension was subject to Employee's appeal. The use of force charge was based on a security video of the incident. The

dishonesty charge was based on Employee's Incident Report and a subsequent Internal Affairs interview. At the Commission hearing, it became apparent that the video was inconclusive and that the use of force charge was dependent on the dishonesty charge. The Department's dishonesty charge was based on alleged inconsistencies between the video, Employee's report, and Employee's statements to Internal Affairs. However, the testimony and other evidence at the hearing did not reveal sufficient inconsistencies to support a finding of intentional inaccuracy. Accordingly, the Department did not prove dishonesty, nor the dependant inappropriate use of force charges. Therefore, it is recommended that the Order of Suspension be reversed; that the Employee be awarded back pay, benefits and interest for any suspension already served relating to the Order of Suspension minus any wages Employee received from outside employment; that the Commission shall read and approve this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Bailey to approve Findings and Recommendations; seconded by Krauel. Carried.

Comments:

Commissioner Krauel: "I think it is a fairly straight forward case. The evidence that the Department introduced into the hearing was the video that underlies Charges 1, 3, and 4. The Hearing Officer found that the video was inconclusive and that the only other evidence on Charges 1, 3 and 4 was the Employee's undisputed testimony which did not corroborate the Department's allegations. Consequently the Department failed to meet its burden on those 3 charges. With respect to the dishonesty charge arising out of the incident report and the internal affairs report, the Hearing Officer found that those were minor inconsistencies which were not sufficient to establish dishonesty and I think that is the correct conclusion. The Department failed to meet its burden on Charge 2, as well. That is why I am supporting the motion."

Commissioners Bailey and Newman: As stated in the Findings, Commissioner Bailey strongly urges the Department not to base failure of probation on this incident. Likewise, Commissioner Newman stated that due to the Commission's reversal of the Department's Order, he feels there would be inequity to Appellant should he be failed on probation due to the incident.

DISCRIMINATION

Complaints

8. **2008-07**, alleging gender discrimination by the Sheriff's Department.

RECOMMENDATION: Assign Commissioner Bailey as Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back.

Staff recommendation approved.

9. **Bryon Yates**, Park Ranger, alleging disability discrimination and favoritism by the Department of Parks and Recreation. (Commissioner Krauel was assigned as the investigating officer in a pending discrimination complaint.)

RECOMMENDATION: Assign Commissioner Krauel as Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back.

Staff recommendation approved.

OTHER MATTERS

Extension of Temporary Appointments

10. Health and Human Services Agency

2 Residential Care Worker Trainees (Bailey Driver, Silvia Guerrero)

2 Residential Care Workers II (Vanessa Brejnak, Susan Heard)

RECOMMENDATION: Ratify.

DISCUSSION:

Commissioner Newman asked why an additional 6 month extension is being requested. Are permanent employees on leave for a year?

Kimberly Medeiros, Group Human Resources Director for the Agency explained that some employees are out for an extended period of time and because temporary appointments can be extended for six months at a time, and the population of the Polinsky Center fluctuates,

plus the Agency's licensing requirements, sometimes it is necessary to extend a six-month appointment so the needs of the Agency are met.

Commissioner Newman announced that he will be monitoring the extensions on an as-needed basis.

Item No. 10 ratified.

11. Public Input.

URGENCY ITEM

Motion by Newman to add No. 12 to this Agenda due to urgency as represented by Commission staff; seconded by Casillas. Carried.

12. **Matthew Koch**, Protective Services Worker, appealing a Notification of Incompatible Activity from the Health and Human Services Agency.

Matthew Koch, along with Abdul Sayid, Worksite Organizer, SEIU Local 221, addressed the Commission. Mr. Koch is unsure of the date he was handed the Notification of Incompatible Activity, however, once he was in receipt of the notice, he contacted supervisors and was instructed to fill out an appeal form which could be located on the internet. Mr. Koch was unable to locate a form. (*Note: there is no form to file with the Civil Service Commission regarding a Rule VIII appeal*). Subsequently, he contacted CSC staff and then became aware that there was a 10-day timeline in which to file an appeal, which Mr. Koch was unaware. Mr. Koch feels that the notice to appeal paragraph on the Department's Notification of Incompatible Activity was inadequate and was provided with inaccurate information.

Kim Medeiros, HR Director for the Health and Human Services Agency, explained that notice was given on the Notification of Incompatible Activity, referring Appellant to Rule VIII of the Civil Service Rules. Rule VIII refers to Rule VII, which clearly states a 10-day timeline. Mr. Koch explained that he searched for an appeal form, but never did research Rule VIII as delineated on the Notification letter from the Agency.

Motion by Krauel to deny request for hearing; seconded by Casillas. Carried.

ADJOURNED: 3:30 p.m.

NEXT REGULAR MEETING OF THE CIVIL SERVICE COMMISSION:

SEPTEMBER 3, 2008

ASSISTANCE FOR THE DISABLED:

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